IN THE HIGH COURT OF BOMBAY AT GOA

First Appeal No.117/1997

1. Shri SavlaramShankar Satardekar,
2. Mrs. Laxmi Savlaram Satardekar
(since deceased) represented by :
2(a) Shri Shashikant S. Satardekar,
2(b) Smt. Manorama S. Satardekar,
both residing at house no.761/B,
Khairut, Aldona, Bardez, Goa.
2(c) Shri Nandakumar S. Satardekar,
2(d) Smt. Namrata N. Satardekar,
both residing at P.O. Aldona,
Santarxett, Bardez, Goa.
2(e) Shri Ramesh S. Satardekar,
2(f) Smt. Smita R. Satardekar
both residing at P.O. Aldona,
Santarxett, Bardez, Goa

2(g) Shri Ashok S. Satardekar,
2(h) Smt. Aparna A. Satardekar
Telvi Apartment, F.No.A,
Vishwas Nagar,
Lamgao, Bicholim – Goa.
2(i) Shri Ramnath Redkar
2(j) Smt. Roshni R. Redkar
both residing at House No.664,
Keri Talwada, Post Harambol,
Pednem, Goa.
2(k) Shri Shamsunder Sawant,
2(l) Smt. Shradha S. Sawant
C/o. Mahadev Naik,
Ganaraj Krupa, Near Primary School,
Xelpem, Dhuler, Mapusa, Goa. ..... Appellants.

V/s.

1. Shri Gajanan Shankar Satardekar,
major of age, married, business,
and his wife;

2. Mrs. Sulochana Gajanan Satardekar,
major of age, married, housewife,

3. Shri Rajaram Shankar Satardekar,
major of age, widower, business,

4. Shri Dhyneshwar Rajaram Satardekar,
major of age, unmarried, service,

5. Shri Sanjay Rajaram Satardekar,
major of age, unmarried, service,

6. Shri Ratnakar Rajaram Satardekar,
major of age, unmarried, service,

7. Mrs. Radhikar Rajesh Shirodkar,
major of age, married, housewife,

8. Shri Rajesh Devidas Shirodkar,
major of age, married, service,

All residents of House No.788,
D'Costa Colony, Mandap,
Navelim, Goa. ..... Respondents.

Mr. J.E. Coelho Pereira, Sr. Advocate with Mr. J.E. Coelho Pereira, Sr. Advocate with Mr. S. Karpe, Advocate for the appellants.

Mr. J.P. Mulgaonkar, Advocate for the respondents.

CORAM : S.A. BOBDE, J.

DATE : JUNE 25, 2004 .

ORAL JUDGMENT :

This first appeal is by the defendants who are aggrieved by the preliminary decree passed by the trial Court, declaring that the respondents are entitled to their 2/3 rd share in the suit property and the appellant to a 1/3 rd share. The trial Court has also directed that a Commissioner be appointed to separate the said share of the suit property.

2. The parties are referred to hereinafter as per their status before the trial Court.

3. Plaintiff No.1 Gajanan Satardekar and defendant No.3 Rajaram Satardekar are the younger brothers of the defendant Sawlaram Satardekar. Plaintiff No.2 is the wife of the first plaintiff and plaintiffs No.4 to 7 are the children of plaintiff No.3. Plaintiff No.8 is the husband of plaintiff No.7.

4. The suit property is a piece of land, admeasuring 800 sq. metres, surveyed under Survey No.386/2 at Aldona and a house thereon. According to the plaintiffs they jointly purchased, on 15.2.1964, this piece of land. They then obtained a loan from Junta de Comercio Externo and constructed a house thereon. They, therefore, sought a declaration of their share. The defendants resisted the suit and claimed that defendant No.1 alone had purchased the suit property and constructed the house thereon with his own money. He claimed that he had entered the names of plaintiffs No.1 and 3 to the sale deed of the land in “good faith”. However, he constructed the house by spending his own money.

5. The learned trial Court framed the following issues:

1. Whether the plaintiffs prove that they along with defendant No.1 have purchased the land and	Answered in the affirma-tive.

	constructed a house bearing V.P. No.627 ?	
2.	Whether the plaintiffs prove that the plaintiffs No.1 and 3 and and defendant No.1 obtained a Loan of Rs.13,000/- on 21-12-65 for construction of the house and the same was repaired jointly, so they are entitled for 2/3 rd share of the suit property ?	Answered in the affirmative.
3.	Whether the defendants prove that the defendant No.1 himself purchased the suit property and in good faith, added the names of plaintiff No.1 and 3 to the sale deed and he alone exclusively constructed a house No.627 by spending his amounts and obtained the loan himself and the plaintiff No.1 and 3 were made formal parties to the loan transaction	Answered in the negative.

The same points arise for determination in this appeal.

6. Plaintiff No. 1 entered the witness box on behalf of the plaintiffs and the defendant No.1 entered the witness box on his on behalf. The trial Court came to the conclusion that the property was jointly purchased by the brothers and the house was constructed from the loan obtained jointly by the brothers. The trial Court, therefore, declared the respective shares of the parties.

7. Mr. Pereira, the learned Counsel for the appellants strongly urged that the trial Court fell into an error in not separating the fact of the construction of the house by the defendant No.1 from the joint

purchase of land. The learned Counsel, therefore, contended that even if it is to be assumed, though not admitted, that the land was purchased jointly by the brothers, the house was constructed exclusively by the defendant from his own funds. It is, therefore, necessary to examine the evidence relied upon by the defendants.

8. Mr. Mulgaonkar, the learned Counsel for the plaintiffs, on the other hand, submitted that the case regarding the land and the house, has not been separately pleaded in the written statement by the appellants, in the sense now urged by him before this Court. According to the learned Counsel, the appellants claimed in regard to both, the land and the house thereon, that the property belong to him exclusively. Now, an examination of the pleadings does show that the defendant pleaded that though the land was purchased jointly in the name of the brothers, it was owned exclusively by him, so also the house. There is no plea to the effect that even if the land is purchased jointly, he has exclusively constructed the house.

9. It is, therefore, necessary to examine the evidence. The plaintiff Gajanan Satardekar entered the witness box and stated that the property was purchased by him, plaintiff No.3 and defendant No.1 jointly. He produced the sale deed in regard to the land which admeasures 800 sq. metres. He has stated that they jointly constructed the house in the year 1966, after obtaining a loan from

the Junta and he produced a copy of the application and a certificate in regard to the loan. He stated that the third plaintiff who did not enter the witness box, had paid a sum of Rs.9000/- for construction of the house. He claimed to have contributed some amount while repaying the loan. This plaintiff produced receipts of having made payment which are on record Exhibit P-6. There is no doubt, as contended by the learned Counsel for the appellant,s that this plaintiff clearly admitted in his cross examination that he did not give money for the construction of the house and that he did not know whether the construction licence was in the name of the appellant. According to the Counsel, this plaintiff went to the extent of later on admitting that he did not pay Rs.500/- towards adjustment of loan, but for the repairs of the house.

10. The criticism made by the learned Counsel is not baseless. However, on considering the evidence in its proper perspective, I am of the view that the trial Court rightly came to the conclusion that the land was purchased jointly and the house was intended to be constructed and was, in fact, constructed out of the loan taken jointly by the brothers. There are some receipts which are part of Exhibit P-6 from Junta de Comercio showing that the payments were received from **Saularam Satardekar and brothers** (emphasis supplied). There are also certain chalans which show that the amounts were paid to the Junta by the appellant alone. There is also evidence that since the loan was not

repaid, notices for recovery of loan were issued by the Junta to defendant No.1 and his brothers. In fact, the document at Exhibit P-8 executed by the plaintiffs Gangaram and Rajaram clearly show that when the loans were sought to be recovered, they executed a document acknowledging the fact that they had obtained a loan for construction of the house on the land. A mere existence of the licence for construction in the name of the appellant would not prove that the house was constructed by him, exclusively. One thing is clear, there was no reason for the brothers to purchase the land in the joint names unless it was intended to be purchased jointly, for joint habitation. On a preponderance of probabilities, I am of the view, having regard to the circumstances of the case, that the suit property was purchased by the brothers jointly and the house was constructed, although physically by defendant No.1, for and on behalf of others. In fact, the trial Court has observed, in my view, rightly that though the plaintiffs did not live in the suit house at Aldona since they were working at Margao, in the year 1986 when the wife of plaintiff No.3 expired, her body was brought to the suit house. This has been rightly viewed as an indication of the fact that the parties treated the house as common.

11. The trial Court has correctly applied the provisions of the Benami Transactions (Prohibition) Act, (45 of 1988) to the property in the present case. In ***Smt. Rebti Devi v. Ram Dutta and anr.,*** A.I.R. 1998 S.C. 310, the Supreme Court has held that a plea of benami raised in

the written statement filed after 19.5.1988 cannot be entertained. In the present case, the written statement was filed on 21.7.1991. The suit itself has been filed somewhere in the year 1991. Mr. Pereira, the learned Counsel for the appellants contended at one stage that if the Act was applied with reference to the construction licence, it would work the other way and preclude the plaintiffs from claiming the title in the property. However, a mere construction licence or a record of rights are not the documents of title which would attract the provisions of the Act. Having regard to the overall circumstances of the case, I find no merit in this appeal, which is, hereby, dismissed.

S.A. BOBDE, J.

ssm.